

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Peter Jenkins,)
Petitioner,) C/A No. 04:06-1451-GRA-TER
v.)
State of South Carolina; and)
Henry D. McMaster, Attorney General)
of the State of South Carolina,)
Respondents.)

)

ORDER
(Written Opinion)

This matter comes before the Court for a review of magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(c), D.S.C., and issued January 29, 2007. Petitioner filed an action pursuant to 28 U.S.C. § 2254 on May 11, 2006. Respondents filed a motion for summary judgment on August 24, 2006. On August 28, 2006, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), Petitioner was advised of the summary judgment procedure and the possible consequences for failure to adequately respond. The Petitioner filed a response in opposition to summary judgment on October 10, 2006. The magistrate now recommends granting the Respondents' Motion for Summary Judgment.

Petitioner brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This

Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Objections to the Report and Recommendation have not been filed.¹

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The Report and Recommendation was mailed on January 29, 2007, and advised Petitioner of his right to file objections. However, the mail was returned as undeliverable on February 8, 2007. According to the Federal Bureau of Prisons website, www.bop.gov, Petitioner was released from jail on October 25, 2007. Petitioner was advised by the magistrate judge in an order dated May 15, 2006, that failure to keep the Clerk of Court's Office notified of any change of address could result in dismissal of his case. The Fourth Circuit has upheld dismissals of cases where *pro se* litigants have not kept a Clerk's Office and opposing counsel informed of a change of address. See, e.g., *Woltz v. Chater*, 74 F.3d 1235, 1996 U.S. App. LEXIS 827 (4th Cir., January 23, 1996); and cf. *In Re Hebron*, 64 F.3d 657, 1995 U.S. App. LEXIS 23966 (4th Cir., August 25, 1995) (denying mandamus relief where *pro se* litigant failed to notify district court of his change of address).

After a review of the magistrate's Report and Recommendation, this Court finds that the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that respondents' motion for summary judgment be GRANTED and that this case be DISMISSED for the reasons stated in the magistrate's Report and Recommendation.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

February 16, 2007

Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.